

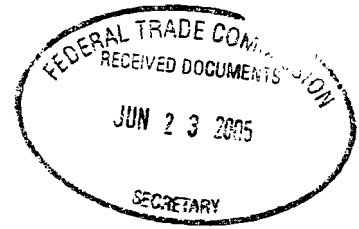


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Louis J. Fresh
Vice Chairman &
General Counsel

June 27, 2005

Federal Trade Commission
Office of the Secretary
Room 159-H
600 Pennsylvania Avenue, N.W.
Washington, DC 20580



Re: CAN-SPAM Act Rulemaking, Project No. R411008

Gentlemen:

MBNA America Bank, N.A. ("MBNA") is pleased to respond to the Notice of Proposed Rulemaking ("NPRM") issued by the Federal Trade Commission ("FTC" or "Commission") (70 Fed. Reg. 25426, May 12, 2005).

The Bank has previously submitted comments on the ANPRM (69 Fed. Reg. 11776, March 11, 2004) and the primary purpose NPRM (69 Fed. Reg. 50091, August 13, 2004).

While the instant NPRM contains proposed rules on a variety of subjects, MBNA wishes to focus its comments on (a) the Commission's proposal to decrease – from 10 business days to 3 business days – the amount of time in which companies must implement opt-outs, and (b) the definition of "sender."

1. Proposal to Reduce Time Limit For Honoring Opt-Out Requests from Ten Business Days To Three Business Days

There would be numerous operational and technical challenges to meeting a three business day time limit for honoring opt-out requests, and we therefore recommend that the Commission expand this time period to 30 calendar days. This would match the time period in the Telephone Consumer Protection Act of 1991, as amended, and would more accurately reflect the real-world operational and technical issues involved in conducting e-mail marketing campaigns.

While requests received via an opt-out link can be added to a suppression list immediately, it takes significantly longer to apply such requests to marketing lists that are in process, i.e. lists currently in use, or being prepared for use in upcoming campaigns. When marketing is frequent and regular (for some businesses, it is continual) there are always lists in process for the next mailing.

MBNA has joint marketing agreements with thousands of organizations. Our financial products are marketed to these organizations' lists of members and customers. For e-mail marketing, we develop all of the marketing materials, while each organization generally completes all of the steps to prepare its list for the mailing, including:

- Select leads from the organization's list
- Divide the list into segments to test different versions of the offer
- Load the e-mail into the system that will send it
- Schedule the campaign around other e-mails that will be sent to the same list
- Determine the number of leads that can be sent per day
- Determine the capacity of the servers that will support the images within the e-mail
- Determine the capacity of the servers that are to support the activities promoted in the e-mail

In addition to these steps, the organization's e-mail list must be suppressed against MBNA's opt-out database, and we have re-engineered our e-mail process to integrate this step. The organization sends its list to our processing vendor to be suppressed. The list is returned to the organization to complete preparations for the e-mail campaign. We complete as many campaign preparation tasks as possible before the file suppression step, so that final file preparation and transmission can occur within 10 days. Our experience shows it can take anywhere between 5 and 10 calendar days after suppression to send an e-mail campaign to an organization's list. The current 10-business-day time period is already causing MBNA to pay more for re-processing lists (up to \$2000 per group) for groups that are not able to e-mail within 10 days and is causing MBNA to forego business opportunities upon learning that groups cannot meet the 10-day turnaround time.

The following table summarizes the key steps and associated time periods involved when MBNA engages in a joint-marketing campaign with one of its endorsing organizations. Typically, the organization has built and maintained the mailing list of its members or customers, while MBNA provides the marketing materials the organization or vendor will transmit. The key step is to process the MBNA's suppression list against the organization's mailing list.

Process	Time (business days)
Vendor runs organization list against suppression file; matches are dropped; list is returned to original format and made available to organization	1 to 2 days
Organization picks up or receives list	1 day
Organization continues internal list processing, data processing, and e-mail delivery preparation	2 to 8 days
Organization sends test e-mails to MBNA; MBNA reviews html, links	1 to 2 days
Organization transmits e-mail message	1 to 7 days Larger lists require more days to send. For example, suppression processing may need to be divided into multiple jobs so that all delivery can be accomplished within 10 days of suppression. Many businesses have a regular schedule for e-mail communications with their members / customers. This regular communication allows a business to avoid over-contacting their e-mail addresses. For the organization that sends its e-mails on Wednesday, for example, if they receive a post-suppression file on Thursday, they will hold it until the following Wednesday to send.

While the opt-out request may come from the recipient by various means (online link, e-mail communication, letter, phone request), the marketer has ten business days to honor the request (i.e., ten days to apply the request to the e-mail list.) However, it is not simply a matter of adding the request to a list or database; that can be done within one or two business days. Rather, the suppression list or database must be processed against the list of any organization that is conducting an e-mail campaign to its customers or members. It is this part of the process that makes the ten-business-day rule unrealistic.

If the timeframe to act on opt-out requests were shortened from the current 10 days, businesses would suffer significant lost opportunities and revenues. Many marketing campaigns could not meet this shortened time requirement limitation, and would have to be cancelled. Shortening the time period would also add significant reengineering and systems costs.

The cost to add an e-mail address to a suppression file is negligible; however, the costs to run marketing files against a suppression database for each campaign are significant. Current costs range from \$0.25/1,000 leads to \$7.00/1,000 leads, depending on list size and the number of processing steps required. Suppression processing can add enough cost to a marketing campaign to render it neither feasible nor profitable. Costs can increase if campaign time frames go beyond the 10-day suppression window, because we must then incur the additional expense of running marketing lists through the suppression process a second time.

Businesses and organizations generally store and maintain e-mail lists in a database that may be centralized or distributed. E-mail address collection and storage may be distributed across different departments or subsidiaries, or may be centralized for more coordinated use. Methods of storage, maintenance, and usage will vary greatly depending on the size of the business, the infrastructure for collection, and the management systems. Some solutions are internal to the company, others are be out-sourced. These methods and infrastructure determine the amount of time required for various steps of the e-mail opt-out and suppression process.

As suppression file size increases, the transmission of these files takes longer in order to maintain a secure transmission environment (e.g., PGP, secure FTP, or hard media). In our experience, a marketer will only be able to meet the ten business-day time frame if it has a central suppression database, and even that structure alone does not ensure that all necessary steps can be completed within the 10 days.

If the business is an active e-mailer, then lists would be constantly "in process," requiring regular processing with the suppression database. An active e-mailer, particularly a large or well-funded one, would have the resources to develop systems to manage opt-out requests more quickly with a minimum of manual intervention. Smaller or less well-funded businesses will struggle to receive and process opt-out requests and apply them to marketing lists in a timely fashion. Where e-mail suppression databases are distributed, more time and resources are required to collect, coordinate, and process suppression. When third party e-mailers are employed, there are additional steps and time required.

2. Definition of "Sender"

We agree that "sender" should be defined as one entity, i.e., the owner of what is deemed to be the primary purpose of the e-mail.

In MBNA's business model, some of our group partners deliver e-mail to their members to promote MBNA products. In those cases, MBNA should be considered the sender and have the appropriate opt-out links. Where the group partner is delivering the e-mail to its members, the group's name should continue to be in the "from" line, thus ensuring that the group's members recognize that the e-mail is being delivered on MBNA's behalf.

For cases in which there are multiple products being offered in one e-mail with no clear primary purpose, "sender" should be defined as the entity whose name is in the "from" line of the e-mail.

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Thank you for the opportunity to provide comments. If you have any questions, please contact the undersigned.

Respectfully submitted,

MBNA America Bank, N.A.

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